

CYNTHIA SCUSE-BROWN,)	
)	
Employee/Grievant,)	
)	DOCKET No. 13-09-594
v.)	
)	
DEPARTMENT OF CORRECTION,)	DECISION AND ORDER
)	
Employer/Respondent.)	

BEFORE Martha K. Austin, Chair, John F. Schmutz, Paul R. Houck, and Victoria Cairns,
Members, a quorum of the Board under 29 *Del. C.* §5908(a).

Kevin R. Slattery
Deputy Attorney General
on behalf of the Department of
Correction

BRIEF SUMMARY OF THE EVIDENCE

The Department of Correction (DOC) offered and the Board admitted into evidence without objection six documents marked for identification as Exhibits A-F.

The employee/grievant, Cynthia Scuse-Brown (Scuse-Brown), offered and the Board admitted into evidence six documents marked for identification as Exhibits 2 and 5-9.

Scuse-Brown testified on her own behalf but did not call any other witnesses.

After Scuse-Brown presented and rested her case, the DOC moved for an involuntary dismissal. The Board granted the motion to dismiss.

FINDINGS OF FACT

Scuse-Brown works as a Social Service Specialist II for the DOC in Kent County. Her job title is Work Program Coordinator. Scuse-Brown helps place persons on probation into jobs where they can earn money to pay off their court-ordered costs and fines.

Scuse-Brown claims that she has been working out of class performing all of the essential job functions of a Senior Probation and Parole Officer. The Board asked Scuse-Brown to go through each of the essential job functions in the Office of Management and Budget (OMB) class specifications for a Probation and Parole Officer. According to Scuse-Brown, she does not perform four of the nine essential functions of a Probation and Parole Officer:

- * Investigates possible probation and parole violations; may request warrant for arrest, search or seizure; may assist law enforcement officials in executing warrant.
- * Attends hearings to answer questions, makes recommendations, and presents progress reports.
- * Prepares narrative reports describing probation/

parole violations, progress, evaluations and recommendations for case disposition.

- * Contacts offenders and their families, the courts. Board of Parole, various state institutions, community resources, mental health facilities and employers to ensure that offenders comply with the conditions of probation and/or parole and that they receive services, e.g., drug counseling, employment and family counseling and related services.

According to Scuse-Brown, she does not perform any of the three additional essential functions of a Senior Probation and Parole Officer:

- * Performs lead level functions to assist in the daily supervision of unit activities such as providing staff training, approving reports of lower level staff, resolving problems and providing technical guidance in case management.
- * Coordinates program areas or special projects and serves as chair of various committees or acts as liaison with community agencies.
- * Works with the most complex cases.

The Board finds as a matter of fact that Scuse-Brown does not perform all of the essential job functions of a Senior Probation and Parole Officer.

CONCLUSIONS OF LAW

Merit Rule 3.2 provides:

Employees may be required to perform any of the duties described in the class specification, any other duties of a similar kind and difficulty, and any duties of similar or lower classes. Employees may be required to serve in a higher position; however, if such service continues beyond 30 calendar days, the Rules for promotion or temporary promotion shall apply,


and they shall be compensated appropriately from the first day of service in the higher position.

The Board concludes as a matter of law that Scuse-Brown did not meet her burden to prove that she was working out of class. She does not perform all of the essential job functions of a Probation and Parole Officer or any of the essential job functions of a Senior Probation and Parole Officer.

ORDER

It is this **25th** day of February, 2014, by a unanimous vote of 4-0, the Decision and Order of the Board to grant the DOC's motion for involuntary dismissal of Scuse-Brown's appeal.


MARTHA K. AUSTIN, MERB Chairwoman


JOHN F. SCHMUTZ, MERB Member


VICTORIA D. CAIRNS, MERB Member


PAUL R. HOUCK, MERB Member

APPEAL RIGHTS

29 Del. C. §5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof on any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court must be filed within thirty (30) days of the employee being notified of the final action of the Board.

29 Del. C. §10142 provides:

- (a) Any party against whom a case decision has been decided may appeal such decision to the Court.
- (b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.
- (c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.
- (d) The court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Mailing date: **FEBRUARY 25**, 2014

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